

[Order entered 4-19-07]

IN THE IOWA DISTRICT COURT IN AND FOR POLK COUNTY

STATE OF IOWA, ex rel., THOMAS J.  
MILLER, ATTORNEY GENERAL OF IOWA  
(99AG23112),

Plaintiff,

vs.

MANSIONS AT HEMINGWAY, LLC,

Defendant.

LAW NO. CV 6591

**CONSENT ORDER, JUDGMENT  
AND DECREE**

NOW on this 19<sup>th</sup> day of April, 2007, the Court is presented with the plaintiff's petition seeking civil penalties and injunctive relief pursuant to Iowa Code sections 480.6(1)(a) and 480.7. The Court having read the petition and being otherwise advised by the parties FINDS:

1. The Court has jurisdiction of the parties and the subject matter of this action and the parties consent to entry of this Consent Order, Judgment and Decree.

2. Defendant Mansions at Hemingway, LLC, admits, for purposes of settlement and for this action only, the violation alleged in paragraph twenty-eight (28) of the Petition at Law.

**THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:**

1. Defendant Mansions at Hemingway, LLC, is assessed a civil penalty of Ten Thousand and no/100 dollars (\$10,000.00) for the violation admitted herein. The defendant shall pay the civil penalty within ten (10) days of the entry of this Consent Order, Judgment and Decree. The defendant shall also pay interest pursuant to Iowa Code section 535.3(1) on any unpaid balance.

Payments of the civil penalty and interest shall be made payable to the State of Iowa and submitted to plaintiff's attorney, David R. Sheridan, at the address noted below.

2. Defendant Mansions at Hemingway, LLC, its officers, employees, agents, successors and all other persons, corporations and other entities acting in concert or participating with the defendant who have actual or constructive notice of this injunction, are permanently enjoined from commencing any excavation in the State of Iowa, except during an emergency pursuant to Iowa Code section 480.4(6), without first contacting the statewide notification center (1-800-292-8989) at least 48 hours prior to the planned excavation, excluding weekends and legal holidays, as required by Iowa Code sections 480.1A and 480.4(1)(a), and providing the information required by Iowa Code sections 480.4(1)(b)(1)-(8) and 480.4(1)(c)(1)-(8); and the defendant is further enjoined from commencing any excavation except under the schedule and pursuant to the terms of each such notification.

3. The Court retains jurisdiction of this matter to insure compliance with the terms of this Order.

4. The costs of this action are taxed to the defendant in the amount of \$\_\_\_\_\_

(Clerk to enter).

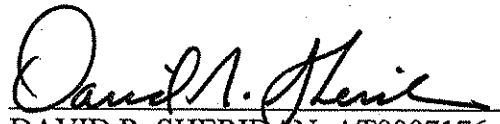
*[signed by Judge Robert B. Hanson]*

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JUDGE, Fifth Judicial District of Iowa

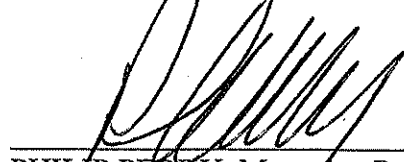
Approved as to form:

THOMAS J. MILLER  
Attorney General of Iowa



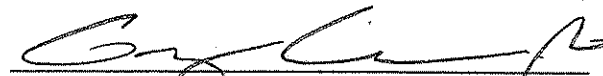
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MANSIONS AT HEMINGWAY, LLC



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[Lawsuit filed 4-19-07]

IN THE IOWA DISTRICT COURT IN AND FOR POLK COUNTY

FILED  
POLK COUNTY  
07 APR 19 12 8:44

STATE OF IOWA, ex rel., THOMAS J.  
MILLER, ATTORNEY GENERAL OF IOWA  
(99AG23112),

Plaintiff,

vs.

MANSIONS AT HEMINGWAY, LLC,

Defendant.

LAW NO. CEU 6591

PETITION AT LAW

COMES NOW Plaintiff State of Iowa, ex rel., Thomas J. Miller, Attorney General of Iowa, and for claim against Defendant Mansions at Hemingway, LLC, states as follows:

**Introduction**

1. The State of Iowa seeks the assessment of civil penalties and injunctive relief against Mansions at Hemingway, LLC, for violations of the "Iowa One Call" statute, Iowa Code chapter 480. The defendant failed to provide prior notice of excavations to the One Call Notification Center, proceeded with the excavations without any underground facilities having been located and marked, and hit and damaged a natural gas pipeline causing an explosion, a fire, extensive property damage to an apartment complex and day care, and endangering the occupants.

**Parties**

2. The State of Iowa is a sovereign state of the United States of America.
3. Thomas J. Miller is the duly elected Attorney General for the State of Iowa.
4. Defendant Mansions at Hemingway, LLC, is an Iowa limited liability company with its home office located at 1500 South 70<sup>th</sup> Street, Suite 201, Lincoln, Nebraska 68506.

## Definitions

5. "Emergency" means "a condition where there is clear and immediate danger to life or health, or essential services, or a potentially significant loss of property." Iowa Code § 480.1(3).

6. "Excavation" means "an operation in which a structure or earth, rock, or other material in or on the ground is moved, removed, or compressed, or otherwise displaced by means of any tools, equipment, or explosives and includes, but is not limited to, grading, trenching, tiling, digging, ditching, drilling, augering, tunneling, scraping, cable or pipe plowing, driving, and demolition of structures." Iowa Code § 480.1(4).

7. "Excavator" means "a person proposing to engage or engaging in excavation." Iowa Code § 480.1(5).

8. "Operator" means "a person owning or operating an underground facility including, but not limited to, public, private, and municipal utilities. An operator does not include a person who owns or otherwise lawfully occupies real property where an underground facility is located only for the use and benefit of the owner or occupant on the property." Iowa Code § 480.1(8).

9. "Underground facility" means an "item of personal property owned or leased by the operator which is buried or placed below ground for use in connection with the storage or conveyance of, or the provision of services supplying water, sewage, electronic, telephonic, or telegraphic communications, electric energy, hazardous liquids, or petroleum products including natural gas or other substances, and includes, but is not limited to, pipes, sewers, conduits, cables, valves, lines, wires, manholes, and attachments to such property but does not include sanitary sewer laterals, storm sewer laterals, and water service lines providing service to abutting private properties." Iowa Code § 480.1(10).

## **Jurisdiction**

10. Iowa Code chapter 480, commonly referred to as the "Iowa One Call" statute, establishes a statewide notification center to receive, document and process notices of excavations. The statute also creates certain duties for excavators and owners and operators of underground facilities.

11. Iowa Code section 480.1A provides that a person shall not engage in any excavation unless the requirements of chapter 480 have been satisfied.

12. Iowa Code section 480.4(1)(a) provides that, prior to any excavation, an excavator shall contact the statewide notification center and provide notice of the planned excavation. The notice must be given at least 48 hours prior to the commencement of the excavation, excluding weekends and legal holidays. Notice is provided by calling the notification center at its toll-free number (1-800-292-8989). The notice for a location inside of a city shall include:

1. a street address or block and lot numbers, or both, of the proposed area of excavation;
2. the name and address of the excavator;
3. the excavator's telephone number;
4. the type and extent of the proposed excavation;
5. whether the discharge of explosives is anticipated;
6. the date and time when excavation is scheduled to begin;
7. approximate location of the excavation on the property; and
8. if known, the name of the housing development and property owner.

Iowa Code §§ 480.4(1)(b)(1)-(8).

13. Pursuant to Iowa Code section 480.4(2), the notification center upon receiving notice from an excavator must then immediately transmit the information contained in the notice to

each operator of underground facilities in the area of the proposed excavation and provide the names of all operators in that area to the excavator. Operators of underground facilities receiving notice must then mark the horizontal location of their underground facilities within 48 hours after receiving the notice, excluding weekends and legal holidays, unless otherwise agreed by the operator and the excavator. Iowa Code § 480.4(3)(a)(1).

14. The only exception to the requirements of Iowa Code section 480.4 is “when an emergency exists.” Iowa Code § 480.4(6).

15. Iowa Code section 480.6(1)(a) provides that a person who violates a provision of chapter 480 is subject to a civil penalty, when the violation is related to natural gas and hazardous liquid pipelines, in an amount not to exceed Ten Thousand Dollars (\$10,000.00) for each violation for each day the violation continues, up to a maximum of Five Hundred Thousand Dollars (\$500,000.00).

16. Iowa Code section 480.6(2) authorizes the Attorney General, upon the receipt of a complaint, to institute legal proceedings necessary to enforce the penalty provisions of chapter 480.

17. Iowa Code section 480.7 authorizes injunctive relief from any violation of Iowa Code chapter 480.

#### **Facts**

18. Defendant Mansions at Hemingway, LLC, owns and operates a large apartment complex located in Johnston, Iowa.

19. MidAmerican Energy is the owner and operator of an underground natural gas pipeline which runs across the Mansions at Hemingway property. The pipeline is 2-inches in

diameter under 60 pounds per square inch (psig) of pressure. The buried pipeline provides natural gas service to several residences at the Mansions at Hemingway complex. Natural gas is an explosive and highly flammable substance.

20. During July 2006, the defendant conducted an excavation around the apartment complex at 6944 Hemingway, Johnston, Iowa. Defendant did not contact the One Call Notification Center regarding this excavation location and, thereby, failed to provide notices to operators of underground facilities whose facilities may be affected by the excavation. Instead, the defendant proceeded with the excavation without any underground facilities having been located and marked on the property.

21. On or about August 24, 2006, the defendant conducted another excavation around the apartment complex at 6944 Hemingway, Johnston, Iowa. Defendant again did not contact the One Call Notification Center regarding this excavation location and, thereby, failed to provide notices to operators of underground facilities whose facilities may be affected by the excavation. Instead, the defendant proceeded with the excavation without any underground facilities having been located and marked on the property.

22. During the August 24, 2006, excavation, defendant's skid loader hit and damaged the MidAmerican Energy natural gas pipeline, causing an explosion and fire, property damage to the apartment complex and its occupants, and property damage to MidAmerican Energy. In addition, the explosion and fire endangered the occupants of one of the apartment units being used as a day care with three small children.

23. Digging with a skid loader constitutes "excavation" as defined in Iowa Code section 480.1(4).



24. At all material times hereto, defendant was an “excavator” as defined in Iowa Code section 480.1(5).

25. A buried natural gas pipeline is an “underground facility” as defined in Iowa Code section 480.1(10).

26. At all material times hereto, there was no “emergency,” as defined in Iowa Code section 480.1(3), that would exempt defendant from the requirement that it contact the statewide notification center prior to the excavations and, thereby, provide notice to owners and operators of underground facilities whose facilities may be affected by the excavations.

### **Violations**

27. During July 2006, Defendant Mansions at Hemingway, LLC, engaged in an excavation at 6944 Hemingway, Johnston, Polk County, Iowa, without first contacting the statewide notification center and providing notice, in violation of Iowa Code sections 480.1A, 480.4(1)(a), and 480.4(1)(b)(1)-(8).

28. On or about August 24, 2006, Defendant Mansions at Hemingway, LLC, engaged in an excavation at 6944 Hemingway, Johnston, Polk County, Iowa, without first contacting the statewide notification center and providing notice, in violation of Iowa Code sections 480.1A, 480.4(1)(a), and 480.4(1)(b)(1)-(8).

### Prayer for Relief

WHEREFORE, Plaintiff State of Iowa, ex rel., Thomas J. Miller, Attorney General of Iowa, requests that the Court:

a. assess a civil penalty against Defendant Mansions at Hemingway, LLC, pursuant to Iowa Code section 480.6(1)(a) for each day of violation of Iowa Code sections 480.1A, 480.4(1)(a), and 480.4(1)(b)(1)-(8), not to exceed Ten Thousand Dollars (\$10,000.00) for each day of each such violation; and

b. issue a permanent injunction enjoining Defendant Mansions at Hemingway, LLC, from commencing any non-emergency excavation in the State of Iowa, without first contacting the statewide notification center at its toll-free number (1-800-292-8989), at least 48 hours prior to the planned excavation, excluding weekends and legal holidays, as required by Iowa Code sections 480.1A and 480.4(1)(a), and providing the information required by Iowa Code sections 480.4(1)(b)(1)-(8) and 480.4(1)(c)(1)-(8); and further enjoining the defendant from commencing any excavation except under the schedule and pursuant to the terms of each such notification.

Plaintiff further requests that the Court tax the costs of this action to the defendant and provide such other relief as the Court may deem just and proper.

Respectfully submitted,

THOMAS J. MILLER  
Attorney General of Iowa



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